

1.17892
DECISION



21237
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-203338

DATE: March 23, 1982

MATTER OF: Pennsylvania Blue Shield

DIGEST:

1. Protester's statement in a protest against the evaluation of its cost proposal, filed after debriefing, that it was prepared to argue that because of its general experience, facilities, and software, its technical proposal must have been as good as the awardee's is not sufficient to constitute a timely protest on ten specific technical deficiencies noted by the agency at the debriefing.
2. Protest against the propriety of an agency's cost evaluation is denied where because of the protester's low technical score, the firm would not have been selected for award in any case.

Pennsylvania Blue Shield (PBS) protests the evaluation of its proposal submitted under request for proposals (RFP) MDA 906-80-R-0007, issued by the Department of Defense's Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) for fiscal intermediary services to process and pay OCHAMPUS claims in the Mid-Atlantic region. PBS contends that the evaluation of its technical proposal was unreasonable with respect to ten areas, and that OCHAMPUS improperly failed to consider an offered discount in evaluating the firm's cost proposal.

We find the protest concerning the technical evaluation to be untimely and the remainder of the protest to be without merit.

The RFP emphasized that the technical aspects of an offeror's proposal were of "significantly greater" importance in the evaluation process than price. PBS's technical proposal received a lower score than any other offeror's, and scored substantially lower than the ultimate awardee, Blue Cross and Blue Shield of South Carolina. PBS was debriefed on the deficiencies in its proposal on May 4, 1981.

PBS filed the protest with our Office on May 15. The protest focused almost entirely on OCHAMPUS's evaluation of PBS's cost proposal, which we discuss later in this decision. The only mention of the technical evaluation was contained in a single paragraph of the three-page protest letter, as follows;

"OCHAMPUS may respond to this protest by admitting a mistake in ignoring the discount and calculating the cost to the government, and stating that there is a sufficient technical difference between the two proposals to overcome a greater than one million dollar difference in the price proposals. In rebuttal, PBS is prepared to argue that based on the fact of its past experience in the CHAMPUS program since 1956, its in-place computer facilities, and existing software, PBS's technical proposal is at least equal to that of the successful offeror. * * *"

In its report on the protest, filed in our Office on July 23, OCHAMPUS defended its evaluation of PBS's cost proposal. OCHAMPUS also asserted that in view of the importance that the RFP placed on the technical proposals as opposed to the cost proposals, OCHAMPUS would have selected South Carolina for award even if the protester's offered discount had been considered and PBS's proposed cost thus evaluated as lower than South Carolina's. OCHAMPUS also declined to respond to the statement in PBS's protest letter quoted above because of the absence of "specific facts and allegations of improper technical evaluation * * *."

In its comments on the agency report, PBS detailed ten areas of its technical proposal that, according to the information it received at the debriefing, OCHAMPUS found deficient in some respect. PBS disputes OCHAMPUS's conclusions regarding some of those deficiencies, and complains that others were not discussed by OCHAMPUS in the negotiations that followed the submission of initial offers, or were so minor in nature that they would have had little impact on contract performance.

Technical Evaluation

Our Bid Protest Procedures require that protests against other than alleged deficiencies that are apparent from the solicitation itself be filed within ten working days after the basis for protest was known or should have been known. 4 C.F.R. § 21.1(b)(2) (1981). PBS was advised at a May 4 debriefing of the ten deficiencies in issue. Therefore, the firm had ten working days after the debriefing to file a protest against OCHAMPUS's conclusions. Lambda Corporation, 54 Comp. Gen. 468 (1974), 74-2 CPD 312.

We do not view the May 15 letter as a protest against the technical evaluation of PBS's proposal. In the letter PBS merely suggested that OCHAMPUS might admit in its report that it evaluated PBS's cost proposal improperly (which the agency did only as an alternative argument) but then might argue that the error made no difference to the selection decision because of the difference in technical scores. PBS stated that in such case it was "prepared to argue" that its proposal must have been as good as the awardee's. PBS, however, did not mention any of the ten specific areas of its proposal that, according to the advice given the firm at the May 4 debriefing, were deficient. In fact, PBS did not mention any technical aspects of its offer at all when it indicated the potential for a dispute about OCHAMPUS's evaluation of the firm's technical proposal. Rather, PBS only asserted that it believed that it had the ability to perform the contract as well as any other firm because of its general capabilities: its experience, the fact that it had computer facilities in place as the incumbent, and its software. We do not find that sufficient to constitute a timely protest against the ten specific deficiencies in the firm's technical proposal of which PBS was advised at the debriefing.

Our Bid Protest Procedures are designed to give protesters and interested parties a fair opportunity to present their cases, with only minimal, if any, disruption to the orderly and expeditious process of Government procurement. See Bird-Johnson Company--Request for Reconsideration, B-199445.3, October 14, 1980, 80-2 CPD 275. They do not contemplate a piecemeal presentation or development of protest issues. See Radix II, Inc., B-186999, February 8, 1977, 77-1 CPD 94. We believe that where a firm has been debriefed so that it knows of the precise reasons behind the evaluation of its technical proposal, the purpose of our Bid Protest Procedures can be served only if the firm's protest reasonably indicates that it is based on a dispute with the debriefing information.

PBS points out that in Kappa Systems, Inc., 56 Comp. Gen. 675 (1977), 77-1 CPD 412, we stated that we generally will consider later-filed materials and/or arguments which merely provide further support for an already timely protest. See also Memorex Corporation, B-200722, October 23, 1981, 81-2 CPD 334. PBS contends that its protest against the ten elements of the technical evaluation should be viewed in that light.

We do not agree. The Kappa Systems rule is intended to avoid a situation in which a firm otherwise would delay filing a protest until it was certain that it was in a position to detail all of the possible separate grounds of its protest. That situation would be detrimental to the basic underlying objective of our Bid Protest Procedures: to assure that protests against the award or proposed award of contracts are made promptly.

The rule, however, presumes a timely initial protest that merely lacks detail. It is not designed to permit a protester to toll our filing requirements by reserving the right, in effect, to raise new grounds of protest subsequently if the firm is not satisfied with the contracting agency's response to its otherwise timely protest.

We also note PBS's assertion that it was not "truly made aware of the magnitude of the errors made by OCHAMPUS in its technical evaluation of PBS' proposal" until it found out in the agency report how good a technical proposal South Carolina submitted, and thus only after receiving the report did it feel "compelled to examine these deficiencies in detail."

Our timeliness rules, however, do not allow a firm that has been debriefed as to precisely what was wrong with its technical proposal to wait to express its disagreement with the asserted deficiencies until it has occasion or inclination to examine them in more detail. The basis for protest--the evaluation of its own proposal--arose at the debriefing and therefore had to be raised within ten working days. See Control Data Corporation, B-197946, June 17, 1980, 80-1 CPD 423.

The protest against the technical evaluation is dismissed.

Cost Evaluation

As stated above, the RFP placed significantly greater emphasis on technical factors than on price. Regarding price, the RFP provided that "Discounts may be considered; however, savings must be enforceable by law or by contract." The discounts contemplated were discounts from the amount billed by health care providers. In evaluating an offer which includes such discounts, the expected amount of the savings would be subtracted from the price proposed for acting as the fiscal intermediary. As a result, the evaluated price would reflect the net cost to the Government of contracting with that offeror.

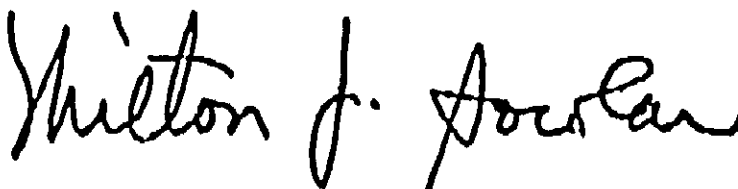
The Mid-Atlantic region includes Pennsylvania, Maryland, Delaware, North Carolina, South Carolina, Virginia and the District of Columbia. Before this procurement, OCHAMPUS had contracted with two different firms for fiscal intermediary services in the region: PBS for Pennsylvania, Delaware and Maryland, and Blue Cross of Southwestern Virginia for the other three states and the District of Columbia. In its offer, PBS proposed to provide the services where it was the incumbent, and to subcontract to Southwestern Virginia where that firm was the incumbent. PBS also stated that it would pursue hospital discounts where available, and noted that Southwestern Virginia had existing agreements for a three-percent discount with the hospitals in that firm's section of the region. At OCHAMPUS's request, PBS furnished the agency a representative copy of one of those agreements.

OCHAMPUS, however, did not consider the three-percent discount in evaluating PBS's price proposal. The agreement furnished by PBS was a 1977 one between a particular hospital and Southwestern Virginia as the prime contractor in

its section of what is now termed the Mid-Atlantic region. OCHAMPUS was concerned that the three-percent discount might not be available to Southwestern Virginia as a subcontractor. On that basis, OCHAMPUS concluded that the discount agreements were not necessarily, in the RFP's terms, "enforceable by law or by contract." PBS protests that conclusion and the agency's resultant failure to consider the discount in evaluating the price proposals.

We deny the protest on this issue. South Carolina's technical proposal was evaluated as significantly superior to PBS's, and as stated above, we will not consider PBS's challenge to the evaluation. Where, as here, an RFP provides that technical factors are of paramount importance in the selection decision, an agency has broad discretion to select the best technical proposal over a lower-ranked but lower cost one. See, e.g., General Exhibits, Inc., 56 Comp. Gen. 882, 887 (1977); 77-2 CPD 101; Alan-Craig, Inc., B-202432, September 29, 1981, 81-2 CPD 263 at p. 8; Federal Procurement Regulations 1-3.805-1 (1964 ed.). South Carolina's evaluated cost was approximately \$16,550,000 for the base year plus two option years, while PBS's was approximately \$19 million without the discount, and would be \$15.3 million with the discount. OCHAMPUS has rescored the PBS and South Carolina offers as if the discount in issue were considered, and because of South Carolina's technical superiority that firm still receives a substantially higher overall score than does PBS. Therefore, OCHAMPUS reports, even if the discount were considered in evaluating PBS's cost proposal the agency simply would not have accepted PBS's low-scoring offer just to save less than eight percent of South Carolina's evaluated price over a three-year period. Consequently, the propriety of OCHAMPUS's decision not to consider the discount in the cost evaluation need not be resolved since it did not affect the selection decision.

The protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States